

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 552 of 1997

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

CHAUHAN BHARATKUMAR DEVJIBHAI
VERSUS
STATE OF GUJARAT

Appearance:

MR DT SONI for the Petitioner
MR VB GHARANIA for the Respondents

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 08/09/1999

C.A.V. JUDGMENT

1. The petitioner was appointed as work-charge Clerk on 20th May, 1981 in the office of the respondent

No.3. In October, 1983, the petitioner was given the extra work of Telephone Operator at PBX Board. It is the case of the petitioner that since then he is continuously working as Telephone Operator. Reference has been made by the petitioner to the certificate of the respondent dated 7th August, 1992, under which his work as Telephone Operator was certified to be satisfactory. The petitioner on completion of ten years services made a representation to the respondents for placing his name in the seniority list. The respondent No.3 in pursuance of that representation of the petitioner aforesaid wrote a letter recommending to the respondent No.2 that the name of the petitioner may be placed in the seniority list of Junior Clerk/Telephone Operator. Then reference has been made to the certificate of the respondent No.3 dated 22nd April, 1994 wherein it has been certified that the petitioner is working as a Clerk since 1983. On 20th January, 1995, the respondent replied to the petitioner by way of rejecting his claim and the seniority list has been issued on 21st July, 1996 in which the petitioner's name has been shown at Sr. No. 22. It is the case of the petitioner that his claim for seniority in comparison to his juniors have been totally ignored. Hence, this special civil application before this Court.

2. In the special civil application, it is first prayed that the order of the respondents dated 20th January, 1995 be quashed and set aside. Next prayer has been made that the name of the petitioner should be included in the seniority list as Telephone Operator or Junior Clerk considering his continuous service from 1981. Then prayer has been made for direction to the respondent to promote him to the post of Manager Gr. II. Some other consequential reliefs have also been prayed for.

3. This special civil application has been contested by the respondents and reply has been filed wherein it is stated that the petitioner has been placed at Sr. No.22 in the seniority list as he is working as Telephone Operator since 1983. It has next been contended that the case of the petitioner for his absorption and appointment in the cadre of Junior Clerk has been examined and in November, 1993 when vacancy was there he has been given the temporary appointment. In reply, an important fact has been stated that the petitioner filed a civil suit bearing No.98/95 before the Civil Judge (S.D.), Porbandar. In the suit, he filed an application Ex.6 for stay wherein ex-parte interim relief was granted, which came to be modified on

4th November, 1996. A preliminary objection has been raised that as the petitioner already availed of the remedy of civil suit, this special civil application is not maintainable. On merits, it is contended that the petitioner remained to be only a work-charge clerk and then he was performing his duties as Telephone Operator but he has been taken as temporary Clerk only in November, 1993.

4. Learned counsel for the petitioner admits that the petitioner filed a civil suit and that suit is still pending in the civil court at Porbandar.

5. From para-9 of the special civil application, I find that the petitioner filed a civil suit, challenging therein the seniority list dated 6th July, 1992. This suit has been filed in the year 1995. It is the say of the petitioner that now the fresh seniority list has been given. So he filed this special civil application.

6. I fail to find any justification in this contention of the learned counsel for the petitioner. As this petition deserves to be dismissed only on the ground that the petitioner cannot be permitted to avail of two parallel remedies simultaneously, I do not consider it to be necessary to decide the matter on merits otherwise it may adversely affect the case of the petitioner in the civil suit.

7. The civil suit is filed in the matter of seniority, which is in substance, the grievance made in this special civil application by the petitioner. It is true that he filed the suit against the seniority list of 1992 but the dispute pertains to the seniority and it will not be converted into another dispute merely because subsequently another seniority list has been published. This second seniority list could have also been challenged by amendment in the civil suit and which would have been the only appropriate and efficacious remedy to the petitioner, but it has not been done. I find sufficient justification and merits in the objection of the learned counsel for the respondents that the petitioner has availed of two parallel remedies simultaneously. The dispute of seniority is pending before the civil court and all the points including the subsequent orders which have been passed in respect thereof are to be challenged before the civil court in the suit which is pending there.

8. One more fact has to be stated that though this petition has been filed, still the petitioner is

continuing with the suit. Now the learned counsel for the petitioner states that he will withdraw the suit but that is not the point. The suit is pending in which the dispute of seniority is there and for the same dispute, this petition, that is, a parallel remedy cannot be permitted to be availed of.

9. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

zgs/-